SUPREME COURT OF THE UNITED STATES.

No. 35.

050.

BANK UNITED STATES PL'FF IN ERR.

VERSUS

WILLIAM B. PRIMROSE.

ERROR TO THE CIRCUIT COURT U. S. FOR ALABAMA. (S. D.)

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UNITED STATES OF AMERICA.

The President of the United States to the Judges of the Circuit Court of the United States for the Ninth Judicial Circuit and Southern District of Alabama.

Because in the record and proceeding as also in the rendition of judgement, in a plea which is in the circuit court before you, between the president, directors, and company of the bank of the United States, plaintiffs, and William D. Primrose, defendant, a manifest error hath happened to the great damage of the said plaintiffs, as by their complaint appears, and it being fit, if error there be, that the same should be duly corrected and full and speedy justice be done the parties aforesaid; you are therefore commanded, if judgement be rendered, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the Supreme Court, to be then and there held, that the record and proceedings being inspected, the said Supreme Court may cause further proceedings therein, to correct the error; what of right, according to law and the custom of the United States, should be done.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of [SEAL.] said circuit court, this second Monday of January, in the year of our Lord one thousand eight hundred and thirty-eight.

Issued this seventeenth day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

Attest:

DAVID FILES,
Cl'k So, Dis. Ala.

The defendant waives citation and excepts due notice of the within writ of error.

JOHN H. JOULS,
for the Defendant.

Circuit Court of the United States for the Ninth Judicial Circuit, Southern District of Alabama.

The President, Directors, and Co. of the Bank of the United States *vs.* William D. Primrose.	Writ of Error to Supreme Court.—No.

I, David Files, clerk of the court aforesaid, do hereby certify that the plaintiffs in the above case have this day deposited in my hands the sum of five hundred dollars to respond costs in the Supreme Court of the United States.

In testimony whereof, at office, in the city of Mobile, I have hereunto set my hand and affixed the seal of said [SEAL.] court, this thirty-first day of May, in the year of our Lord one thousand eight hundred and thirty-eight.—Signed original, duplicate, and triplicate.

DAVID FILES, *Clerk.*

Pleas had before the Honorable the Circuit Court of the United States for the Ninth Judicial Circuit and Southern District of Alabama, at a term thereof begun and held in and for said district, at Mobile on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before his Honor John McKinley, presiding Judge of said Court.

Be it remembered, that heretofore, to wit, on the first day of October, in the year of our Lord one thousand eight hundred and thirty-seven, the president, directors, and company of the bank of the United sued out of said court their writ of cabeas ad respondum, in the words and figures following, to wit:

The President, Directors, and Company of the Bank of U. S. *vs.* William D. Primrose.	Circuit Court of the United States for the Ninth Judicial Circuit, Southern District of Alabama.

United States of America.

The President of the United States to the Marshal of said District, greeting:

You are commanded to take the body of William D. Primrose, who is a citizen of the State of Alabama, and him safely keep, so that you have him before the hon. the circuit court aforesaid, at the place of holding said court, at Mobile, on the second Monday of October, 1837, to answer unto the president, directors, and company of the bank of the United States, a body corporate, chartered by the State of Pennsylvania, composed of citizens of the State of

Pennsylvania, and of states of the United States other than the State of Alabama; in a plea of trespass on the case and so forth, and also for certain promises and assumptions, by the said defendant to the said plaintiffs made and not performed, to their damage eleven thousand dollars. Herein fail not and have you then and there this writ.

Witness the Hon. Roger B. Taney, chief justice of the Supreme Court of the United States, and the seal of [SEAL.] said circuit court, this second Monday of April, in the year of our Lord one thousand eight hundred and thirty-seven.

Issued the first day of October, in the year of our Lord one thousand eight hundred and thirty-seven.

Attest: DAVID FILES,
Clerk Sou. Dis. Ala.

I acknowledge myself security for costs, at the instance of the plaintiffs, in the above suit.

S. GRIFFITTS FISHER.

MOBILE, *Jan'y 14th*, 1837.

EXCH. FOR $5,350 00.

Four month after sight of this first of exchange, second of same tenor and date, unpaid, pay to Mr. W. D. Primrose, or order, five thousand three hundred and fifty dollars, value received, and charge the same, as advised, to

Your ob't serv'ts,
CHAS. GASCOIGNE.

To Messrs. J. & C. Gascoigne, New York.

Endorsed, pay Geo. Poe, jr., ag't, or order.
W. D. PRIMROSE.

Accepted, New York, Jan'y, 28, 1837.
J. & C. GASCOIGNE.

This action is founded on a bill of exchange, acceptance, and endorsement, of which the above is a copy.

S. GRIFFITTS FISHER,
Pro Pl'ffs.

I accept due service of the within writ, as of the first day of October, 1837, and agree to place it on the trial docket of the April term, 1838, which I hereby authorise the clerk to do accordingly.
W. D. PRIMROSE.

And afterwards, to wit, at a term of the court aforesaid, begun and held, in and for the district aforesaid at Mobile, on the second Mon-

day of October, in the year of our Lord one thousand eight hundred and thirty-seven, the plaintiffs filed their declaration in the words and figures following, to wit:

In the circuit court of the United States for the ninth judicial circuit, of the term of October, 1837, by consent, southern district of Alabama, ss:

William D. Primrose, a citizen of the State of Alabama, was attached to answer the president, directors, and company of the bank of the United States, a body corporate, chartered by the State of Pennsylvania, composed by citizens of the State of Pennsylvania and of States of the United States other than the State of Alabama, in a plea of trespass on the case, and so forth, and therefore the said plaintiffs, by their attorney, complains, for that whereas, heretofore, to wit, on the 14th day of January, A. D. 1837, at Mobile, to wit, in the district aforesaid, one Charles Gascoigne made his certain bill of exchange, in writing, bearing date the day and year aforesaid, and then and there, and thereby required Messrs. J. & C. Gascoigne, four months after sight thereof, his first of exchange, second of same tenor and date unpaid, to pay to the order of the said defendant five thousand three hundred and fifty dollars, value received, and then and there directed the said bill to the said J. & C. Gascoigne, at New York, and delivered the same to the said defendant. And the said J. & C. Gascoigne afterwards, to wit, on the 28th day of January, A. D. 1837, at New York aforesaid, to wit, at the district aforesaid, saw and accepted the said bill, and the said defendant on the day and year last mentioned, to wit, at the district aforesaid, endorsed and delivered the said bill, so accepted, to the said plaintiffs, and the said J. & C. Gascoigne did not pay the said bill when the same became due and payable according to the tenor and effect thereof, and of their said acceptance thereof, although the same was duly presented to them, and payment thereof demanded, on the day when the same became due, and thereupon the said bill was duly protested for non-payment, to wit, at New York aforesaid, to wit, in the district aforesaid, on the 31st day of May, A. D. 1837, of all of which the said defendant had due notice. By means whereof, the said defendant became liable to pay to the said plaintiffs the said sum of money in the said bill, specified on request, and being so liable, he, the said defendant, in consideration thereof, undertook, and then and there promised the said plaintiffs to pay them the said sum of money in the said bill mentioned on request; yet the said defendant has disregarded his promise, and has not paid the said sum of money, or any part thereof. Whereupon the plaintiffs say they are injured and have sustained damage to the amount of eleven thousand dollars, wherefore, they sue.

S. GRIFFITS FISHER,
Pro plffs.

And afterwards, to wit, at the same term of the court aforesaid, begun and held at the district aforesaid, at Mobile, the defendants filed their plea, in the words and figures following, to wit:

The United States of America, circuit court of the United States for the ninth judicial circuit and southern district of Alabama, October term, A. D. 1837, William D. Primrose ats. the president, directors and company of the bank of the United States. And now at the said term of the court comes the said defendant by John H. Jones his attorney, and defends the wrong, &c., and when, &c., and says that he did not assume and undertake as the said plaintiffs hath above against him complained, and of this he puts himself upon the country.

JOHN H. JONES,
Att'y for the defendant.

And afterwards, to wit, at a term of the court aforesaid, begun and held, in and for the district aforesaid, at Mobile, on the second Monday of April, in the year of our Lord one thousand eight hundred and thirty-eight, before his honor John McKinley, presiding judge of said court, came the said parties as follows, to wit:

CASE AGREED.

The following case, by agreement, was this day submitted to his honor, the presiding, viz:

The plaintiffs are a body corporate existing under and by virtue of a law of the State of Pennsylvania, authorised by its charter to be sued and be sued by the name of the president, directors and company of the bank of the United States, and to deal in bills of exchange, and is composed of citizens of the state of Pennsylvania, and of states of the United States other than the state of Alabama. The defendant is a citizen of the state of Alabama. George Poe, junior, was the agent of the plaintiffs, resident in Mobile, and in possession of funds belonging to the plaintiffs in trust to him for the sole purpose of purchasing bills of exchange. The said George Poe, junior, as such agent, on the fourteenth day of January, eighteen hundred and thirty-seven, purchased at Mobile, the bill declared upon, and paid for the same in notes of the branch of the bank of the state of Alabama, at Mobile. The defendant is the payee of the bill and, endorsed it to plaintiffs, the present holder. The bill was presented at maturity to the acceptors, and duly protested for non-payment, and due and legal notice given to the defendant.

The question for the opinion of the court on the foregoing statement of fact, is whether the purchase of the said bill of exchange by the plaintiffs as aforesaid, was a valid contract under the laws of Alabama. If the court be of opinion that the said contract was valid, and that the said plaintiffs as holders of the said bill acquired the legal title thereto, by the said purchase, then judgement to be rendered for the plaintiffs for the sum of $5,350 00, with interest at 8 per cent. since 30 May, 1837; and ten per cent. damages, and two dollars cost of protest. But if the court be of opinion that the said

purchase was prohibited by the laws of Alabama, and the contract was therefore invalid and void, that judgement be rendered for the defendant.

The above case is submitted to be made part of the record.

(Signed) S. GRIFFITTS FISHER,
For plaintiffs.

(Signed) JOHN H. JONES,
Att'y for defendant.

Whereupon, it seems to the court that the said contract or purchase was and is void and of no effect, and that the said plaintiffs ought not further to have or maintain their aforesaid action thereof against him. Therefore it is considered by the court that the said president, directors and company of the bank of the United States take nothing by their said writ, and that the said defendant go hence without a day and recover his costs.

The following is the agreement entered into between the counsel for the plaintiffs and the counsel for the defendant, to wit:

In the Circuit Court of the United States for the Ninth Judicial Circuit, Southern District of Alabama, ss.

OF THE TRIAL TERM, 1838.

The President, Directors and Company of the BANK OF THE UNITED STATES,
vs.
WILLIAM D. PRIMROSE.

The plaintiffs are a body corporate, existing under and by virtue of a law of the state of Pennsylvania, authorised by its charter to sue and be sued by the name of the president, directors and company of the bank of the United States, and to deal in bills of exchange, and is composed of citizens of the state of Pennsylvania, and of states of the United States other than the state of Alabama. The defendant is a citizen of the state of Alabama. George Poe, junior, was was the agent of the plaintiffs, resident in Mobile, and in the possession of funds belonging to the plaintiffs, intrusted to him for the sole purpose of purchasing bills of exchange. The said George Poe, junior, as such agent on the fourteenth day of January, A. D. 1837, purchased at Mobile, the bill declared upon, and paid for the same in notes of the branch of the bank of the state of Alabama, at Mobile. The defendant is the payee of the bill, and endorsed it to plaintiffs, the present holder. The bill was presented at maturity to the acceptors and duly protested for non-payment, and due and legal notice given to the defendant.

The question for the opinion of the court on the foregoing statement of facts is, whether the purchase of the said bill of exchange by the plaintiffs as aforesaid, was a valid contract under the laws of Alabama. If the court be of opinion that the said contract was

valid, and that the said plaintiffs, as holders of the said bill, acquired the legal title thereto by the said purchase, then judgement to be rendered for the plaintiffs for the sum of five thousand three hundred and fifty dollars, with interest at eight per cent. since 30th May, 1837, and ten per cent. damages on it. But if the court be of opinion that the said purchase was prohibited by the laws of Alabama, and the contract was therefore invalid and void, then judgement to be rendered for defendant.

The above case is submitted to be made part of the record.

S. GRIFFITTS FISHER,
For plaintiffs.

JOHN H. JONES,
Att'y for defendant.

I, David Files, clerk of the circuit court of the United States for the ninth judicial circuit and southern district of Alabama, do hereby certify that the above and foregoing four pages contain a full, true, and perfect exemplification of the record and proceedings of a certain suit lately pending and determined in the court aforesaid, wherein the president, directors and company of the bank of the United States were plaintiffs, and William D. Primrose was defendant.

[SEAL.] In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court, at office in the city of Mobile, this seventeenth day of May, in the year of our Lord one thousand eight hundred and thirty-eight.

DAVID FILES,
Cl'k. So. Dist. Ala.